STATE OF MICHIGAN

COURT OF APPEALS

ROLAND KAISER, Personal Representative of the Estate of MARION ROSE KAISER, Deceased, Plaintiff-Appellant,	UNPUBLISHED October 31, 2006
v JAMES ROBERT ALLEN, a/k/a JAMES KROTZER, Defendant-Appellee.	No. 264600 Bay Circuit Court LC No. 03-003800-NI

Before: Whitbeck, C.J., and Saad and Schuette, JJ.

PER CURIAM.

Plaintiff Roland Kaiser (Kaiser), as the personal representative of the estate of Marion Kaiser, appeals as of right from a judgment for defendant James Allen entered in this automobile negligence action. We reverse and remand. We decide this appeal without oral argument.[1]

I. Basic Facts And Procedural History

Marion Kaiser was killed when Allen, who was driving a car owned by Gary Keidel, ran a stop sign and collided with Kaiser's car. Kaiser settled with Keidel for $300,000 and proceeded to trial against Allen, who admitted both negligence and proximate cause. The jury returned a verdict of $100,000 in Kaiser's favor. Allen argued that he was entitled to set off the settlement amount paid by Keidel, leaving a net verdict of zero. The trial court agreed.

II. Entitlement to Set Off Settle Amount

A. Standard Of Review

We review de novo the question of law concerning whether Allen was entitled to set off the settlement amount.[2]

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[1] MCR 7.214(E).

[2] *Markley v Oak Health Care Investors of Coldwater, Inc*, 255 Mich App 245, 249; 660 NW2d 344 (2003).

B. Analysis

Before 1995, concurrent tortfeasors who caused a single or indivisible injury in Michigan were "jointly and severally" liable.[3] "This meant that . . . the injured party could either sue all tortfeasors jointly or he could sue any individual tortfeasor severally, and each individual tortfeasor was liable for the entire judgment, although the injured party was entitled to full compensation only once."[4] Consequently, if the plaintiff settled with one of several defendants liable in tort, the release did not discharge the other defendants but it did "reduce[] the claim against the other tortfeasors to the extent of any amount stipulated by the release . . . or to the extent of the amount of consideration paid for it, whichever amount [was] the greater."[5] Thus, if a plaintiff settled with one defendant and obtained a judgment against the other defendant, the judgment was to be reduced by the settlement amount.[6]

However, since sweeping tort reform was passed in 1995, tort liability for each defendant is, in most cases, no longer *joint and several*, but merely *several*,[7] and each defendant is liable only for his percentage of fault.[8] Consequently, in a case where a codefendant settles, there is no need for a setoff because the nonsettling defendant is "responsible for an amount of damages *distinct* from the settling defendant on the basis of allocation of fault."[9] "Therefore, a settlement payment cannot be deemed to constitute a payment toward a loss included in a later damage award entered against the nonsettling tortfeasor."[10]

Some remnants of joint and several liability survived tort reform,[11] such as medical malpractice actions where the plaintiff is not at fault[12] and cases in which the defendant's act or omission constitutes certain crimes.[13] But none of those exceptions are applicable here.

Keidel's settlement represented damages attributable only to his own allocated fault. As Allen owed damages distinct from Keidel, he should not be able to set off any portion of the settlement. The verdict rendered against Allen represents the jury's determination of the amount

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[3] *Gerling Konzern Allgemeine Versicherungs AG v Lawson*, 472 Mich 44, 49; 693 NW2d 149 (2005).

[4] *Id*.

[5] MCL 600.2925d(b).

[6] *Thick v Lapeer Metal Products* Co, 419 Mich 342, 348 n 1; 353 NW2d 464 (1984).

[7] MCL 600.2956.

[8] MCL 600.2957(1); MCL 600.6304(4). At the same time, MCL 600.2925d was amended and former subsection (b) was deleted.

[9] *Markley*, *supra* at 255 (emphasis added).

[10] *Id*.

[11] *Id*. at 251-252.

[12] MCL 600.2956; MCL 600.6304(6)(a).

[13] MCL 600.6304(4); see MCL 600.6312.

of damages attributable to his conduct, regardless of what Kaiser received from Keidel. There is nothing in the record to show that the parties expressly agreed to waive the application of the tort reform standards and have this case decided under prior law and thus the trial court erred in relying on *Thick* to resolve the setoff issue.[14]

Reversed and remanded for reinstatement of the original jury verdict. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ Henry William Saad
/s/ Bill Schuette

[14] See MCL 600.6304(1)(b).